



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/839,294      | 04/23/2001  | Toshiaki Watanabe    | 206276US-2          | 2996             |

22850 7590 12/01/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

YE, LIN

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2615

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/839,294

Applicant(s)

WATANABE, TOSHIAKI

Examiner

Lin Ye

Art Unit

2615

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

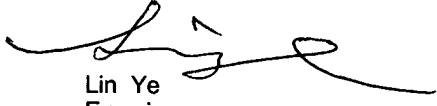
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 2-8 and 11.  
Claim(s) rejected: 1, 9 and 10.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Lin Ye  
Examiner  
Art Unit: 2615

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/15/2005 have been fully considered but they are not persuasive as to claims 1, 9 and 10.

For claims 1, 9 and 10, the applicant argues that Okajima (U.S. Patent 6,636,262) cannot be modified to determine the proper exposure value based on an average luminance level because the principle of operation of Okajima (removing high frequency components), when combined with Takei (U.S. Patent 5,353,058), would be changed to determine an average luminance level of a plurality of areas and selecting one area, based on chromacity level, to determine the proper exposure value (See Applicant's REMARKS, page 4, lines 12-16).

The examiner disagrees. The examiner understands that the Okajima reference and Takei reference disclose two different methods to solve a problem associated with automatically focusing on a entire picture plane that includes a high luminance object (main subject), **but the examiner never sates that completely using the method of Takei reference to replace the method of Okajima.** The both Okajima and Takei references show an exposure control apparatus comprising: an area generating unit which divides the photographic screen into a predetermined number of areas (regions); and an luminance calculating unit which calculates an luminance in the area generated by the area generating unit (See Okajima's Figure 5, Col. 3, lines 65-67 and Takei's Figure 6A, Col. 6, lines 15-27). However, the Okajima reference does not explicitly shows the value of luminance of each area is an average luminance of

each area. The Takei reference clearly shows the value of luminance of each area is an average luminance of each area. **This is evidenced that one of ordinary skill in the art at the time of the invention to see more advantages for the exposure control apparatus of Okajima using an average luminance of each area to represent the value of luminance of each area, because when the deciding unit (comparator 912 of Okajima, see Col. 4, lines 57-65) compares the luminance level of each area and threshold value for determining which area has high luminance component (a main subject), the deciding unit can avoid to make a mistake that determining a non-subject area which containing a few defective pixels associated high luminance level is a main subject area.**

The applicant also argues that the examiner did not show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed (See Applicant's REMARKS, page 5, lines 12-15) in the final rejection.

The examiner disagrees. The examiner clearly set forth the motivation/reasons to the exposure control apparatus of Okajima using an average luminance of each area to represent the value of luminance of each area in the last Office action mailed on 8/15/05 (page 3, lines 19-22 and page 4, lines 1-7). The Takei reference is evidence that one of ordinary skill in the art at the time to see more advantages the exposure control apparatus has an average luminance calculating unit configured to calculate an average luminance in each area so that the entire luminance level of image can be evaluated more efficiently and accurately, and the apparatus performing appropriate exposure control by distinguishing between and sensing a back lighted state and an excessively front-light state (See Takei's Col. 3, lines 6-11). For

Art Unit: 2615

that reason, it would have been obvious to one of ordinary skill in the art to modify the exposure control apparatus of Okajima ('262) by providing the luminance calculating unit calculates an average luminance in an area to represent the value of luminance in the area generated by the area generating unit as taught by Takei ('058).

2. The claims 1, 9 and 10 will be rejected as set Final in the previous Office Action mailed on 8/15/05.

***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Ye whose telephone number is (571) 272-7372. The examiner can normally be reached on Mon-Fri 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'L. Ye', with a long horizontal flourish extending to the right.

Lin Ye  
Examiner  
Art Unit 2615

November 28, 2005